No. 93-1349

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Supreme Court of the United States

OCTOBER TERM, 1993

DAVID L. RAMSEY, SECRETARY, DEPARTMENT OF HEALTH AND HOSPITALS, STATE OF LOUISIANA, *ET AL.*, PETITIONERS

V.

ABBEVILLE GENERAL HOSPITAL, *ET AL.*, RESPONDENTS

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF OF THE STATES OF INDIANA, ALASKA, ARIZONA, CALIFORNIA, COLORADO, CONNECTICUT, FLORIDA, HAWAII, IDAHO, ILLINOIS, IOWA, KANSAS, KENTUCKY, MAINE, MARYLAND, MASSACHUSETTS, MICHIGAN, MINNESOTA, MISSISSIPPI, MISSOURI, MONTANA, NEBRASKA, NEVADA, NEW JERSEY, NEW MEXICO, NEW YORK, NORTH CAROLINA, NORTH DAKOTA, OHIO, OKLAHOMA, OREGON, PENNSYLVANIA, RHODE ISLAND, SOUTH CAROLINA, SOUTH DAKOTA, TENNESSEE, TEXAS, UTAH, VERMONT, VIRGINIA, WEST VIRGINIA, WASHINGTON, WISCONSIN, THE DISTRICT OF COLUMBIA, AND THE TERRITORY OF GUAM, AS AMICI CURIAE SUPPORTING PETITIONERS

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QUESTIONS PRESENTED

1. Whether this Court should reconsider its decision in *Wilder* v. *Virginia Hospital Association*, 496 U.S. 498 (1990), that the Boren Amendment, 42 U.S.C. § 1396a(a)(13)(A), can be enforced by health care providers through an action under 42 U.S.C. § 1983.

2. Whether a court, in reviewing the procedural requirement of the Boren Amendment that the State "find[]" that its Medicaid reimbursement rates are "reasonable and adequate," is authorized to engage in *de novo* review of the quality of the State's "factfinding process," the "quantum of evidence" that supports the State's findings, and the State's rate-setting methodology.

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BRIEF OF THE STATES OF INDIANA, ET AL., AS AMICI CURIAE SUPPORTING PETITIONERS

INTEREST OF AMICI CURIAE

The 43 States that join in this amicus brief all participate in the Medicaid program or, in the case of Arizona, a similar program under a special federal grant. Medicaid is a cooperative federal-state program that provides federal

financial assistance to States for reimbursing certain costs of medical assistance for the indigent. The States and the federal government spent a total of $91.5 billion on the Medicaid program in Fiscal Year 1991, far in excess of spending for any other state or federal means-tested benefits program.[1/] The States contributed $39.3 billion, or 43 percent, of that total. *Id.* Total Medicaid spending rose to $118 billion in 1992, and continues to increase.[2/]

The States' contribution to Medicaid has skyrocketed along with overall Medicaid spending. The States' contribution rose from $14.9 billion in FY 1982 to $50.3 billion in FY 1992. Green Book at 1646-47. These enormous expenditures represent a substantial and increasing percentage of total State spending for all purposes. Between 1987 and 1991, Medicaid spending grew from 10 percent to 14 percent of total spending by the States, and, except for spending on elementary and secondary education, is the States' largest budgetary item. *Medicaid Sourcebook* at 491.[3/] In many States, the rate of increase in Medicaid spending now equals or exceeds the entire amount of new funds available from all sources in a given year.

The Boren Amendment was intended to grant States greater flexibility to control Medicaid costs and to reduce

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[1/] Congressional Research Service, 103d Cong., 1st Sess., *Medicaid Source Book: Background Data and Analysis* 468 (Comm. Print 1993) ("*Medicaid Sourcebook*").

[2/] Staff of House Comm. on Ways and Means, 103d Cong., 1st Sess., *1993 Green Book: Overview of Entitlement Programs* 1647 (Comm. Print 1993) ("*Green Book*").

[3/] The statistics include federal grant-in-aid as part of state Medicaid spending, but exclude local funding. See *id.* at 491 n.13.

federal oversight of State reimbursement plans. In *Wilder* v. *Virginia Hospital Association*, 496 U.S. 498 (1990), this Court held that health care providers may bring actions under 42 U.S.C. § 1983 to enforce the provisions of the Boren Amendment. *Wilder* has resulted in a flood of litigation challenging State compliance with the Boren Amendment.[4/] Boren Amendment litigation has proved to be extremely costly and disruptive, as courts have imposed unrealistic requirements and engaged in micro-management of State Medicaid programs. Indeed, federal courts are now exercising greater oversight than the Department of Health and Human Services exercised before the Boren Amendment was enacted. Obviously, something has gone terribly wrong. Judicial misapplication of the Boren Amendment now poses a serious threat to the States' administration of the Medicaid program, and warrants the intervention of this Court. In our view, the questions presented in this case are at the center of the problem with the Boren Amendment.

The *amici* States believe that this case presents an appropriate opportunity for the Court to reconsider its decision in *Wilder*. At a minimum, the *amici* States urge the Court to grant review for purposes of establishing that the scope of judicial review in Boren Amendment cases is properly limited and that the decisions of responsible State officials concerning Medicaid reimbursement methodologies are accorded significant deference when reviewed by courts.

REASONS FOR GRANTING THE PETITION

The *amici* States will address two reasons for granting the petition for a writ of certiorari. First, the Court's decision in

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[4/] The Appendix to this brief lists 96 Boren Amendment cases, including 41 cases decided since this Court's decision in *Wilder*.

Wilder has proved to be unworkable, and should be reconsidered. Second, there is now a "bedlam" of disagreement in the lower courts on the content of the requirements of the Boren Amendment as well as on the appropriate standard of judicial review, with numerous courts engaging in a highly detailed review of reimbursement systems and failing to give substantial deference to the Medicaid reimbursement decisions made by State officials.

I. THE COURT SHOULD RECONSIDER ITS DECISION IN *WILDER*

The Boren Amendment provides that participating States must "find[], and make assurances satisfactory to the Secretary," that their rates are "reasonable and adequate" to meet the costs that must be incurred by "efficiently and economically operated facilities" to ensure that patients have "reasonable" access to services of "adequate" quality. 42 U.S.C. § 1396a(a)(13)(A). The Secretary has declined to adopt a national definition of any of these open-ended statutory terms, on the ground that "States should determine the factors to be considered in determining what rates are 'reasonable and adequate' to meet the costs of 'efficiently and economically operated facilit[ies].'" *Wilder*, 496 U.S. at 507 (quoting 48 Fed. Reg. 56049 (1983)).

Congress' "primary objective" in enacting the Boren Amendment was "to free States from reimbursement according to Medicare 'reasonable cost' principles." *Wilder*, 496 U.S. at 515. This was expected to lead to a reduction in the skyrocketing growth of Medicaid expenditures. See S. Rep. No. 471, 96th Cong., 1st Sess. 28 (1979). Also, "Congress sought to decentralize the method for determining rates" and to "g[i]ve States leeway in adopting a method of computing rates." *Wilder*, 496 U.S. at 515. Congress intended "that the primary responsibility for developing rates be transferred to

the States." *Id.* at 516 (quoting S. Rep. No. 139, 97th Cong., 1st Sess. 478 (1981) ("[T]he committee expects that the Secretary will keep regulatory and other requirements to the minimum necessary to assure proper accountability, and not to overburden the States and facilities with unnecessary and burdensome paperwork requirements").

In *Wilder*, a closely divided Court held that health care providers can bring actions under 42 U.S.C. § 1983 to compel States to comply not only with the "bare" procedural requirement of the Amendment, but also with the substantive requirement that rates must in fact be reasonable and adequate. 496 U.S. at 512-13. The Court declined to specify the appropriate standard of judicial review, but observed: "That the amendment gives the States substantial discretion in choosing among reasonable methods of calculating rates may affect the standard under which a court reviews whether the rates comply with the amendment." *Id.* at 519.

Wilder has produced an avalanche of litigation challenging the States' compliance with the Boren Amendment. Experience in these cases has shown that the courts are unable to fill the "definitional abyss" created by the vague terms of the Boren Amendment. *Lett* v. *Magnant*, 965 F.2d 251, 253 (7th Cir. 1992). The problem is not simply that federal judges have no expertise in determining whether rates are adequate to cover the costs that "must be incurred by efficiently and economically operated" health care providers; even the experts are baffled by the vague generalities of the Boren Amendment. The Health Care Financing Administration (the federal agency that administers Medicaid at the federal level) has recognized that "the measurement of efficiency remains elusive as a result of continued weaknesses in the ability of researchers to account for differences in

hospital outputs' and input prices." 56 Fed. Reg. 26126 (June 6, 1991).[5/]

Unfortunately, due perhaps to the substantial ambiguities in the statute, many lower courts have involved themselves in the details of the State's rate-setting processes, and have imposed elaborate and unwarranted requirements on the States. Judicial review has become intrusive and unpredictable, and has disrupted the States' administration of the Medicaid program. The following examples illustrate the severe problems created by courts attempting to enforce the Boren Amendment.

- In **Alaska**, nursing home payment rates are the highest in the United States, and HCFA repeatedly has expressed concern that the State's rates are in excess of the maximum permitted under federal law. Nursing homes nevertheless brought an action under 42 U.S.C. § 1983, and a state court invalidated the State's "reasonableness cap" on its rates on the ground that state officials had not identified

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[5/] A nationally prominent consultant in the area of Medicaid reimbursement, appearing as an expert on behalf of nursing homes challenging New Jersey's reimbursement system, testified that it is difficult, if not impossible, to identify and determine efficient and economic facilities with precision, and that she was "very reluctant to say exactly where these lines should be drawn because it is a matter of judgment." Testimony of Barbara Manard, Hearing Transcript at 3.75, *New Jersey Ass'n of Health Care Facilities, Inc.* v. *Gibbs*, 838 F. Supp. 881 (D. N.J. 1993); see also Tr. at 1.40, 1.56, 1.65, 2.98, 2.99, 2.116. Nonetheless, courts have invalidated State reimbursement systems when States fail to "identify and determine [ ] efficiently and economically operated [facilities]." See, *e.g.*, *Pinnacle Nursing Home* v. *Axelrod*, 928 F.2d 1306 (2d Cir. 1991); *Amisub (PSL), Inc.* v. *Colorado Dep't of Social Servs.*, 879 F.2d 789 (10th Cir. 1989), *cert. denied*, 496 U.S. 935 (1990).

"efficient and economic" providers.[6] On appeal, the Alaska Supreme Court rejected the trial court's interpretation of the Boren Amendment (and in so doing disagreed with the Tenth Circuit's decision in *Amisub (PSL), Inc.* v. *Colorado Department of Social Services*, 879 F.2d 789, 795 (1989), cert. denied, 496 U.S. 935 (1990)), but nevertheless affirmed the trial court's judgment on the ground that the State had not made "concrete findings, based on studies of existing facilities." 856 P.2d at 761-64.

- In **Missouri**, the State adopted a generous reimbursement plan for nursing homes in 1990 under which the vast majority of nursing homes would receive sufficient reimbursement to cover all of their allowable costs. A federal district court found the plan in violation of the procedural requirements of the Boren Amendment because the State had not conducted separate studies showing that each of its standards for allowable costs was a proper measure of provider efficiency.[7]

- **New York's** Medicaid reimbursement system was developed over three years under a grant from HCFA. The system is considered so advanced that the federal government may adopt a similar system for the Medicare Program. Federal and state courts nevertheless have invalidated aspects of the New York system under the Boren Amendment on the ground that the State's findings justifying its rates did not follow the format established by cases in other jurisdictions —

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[6] *Department of Health and Social Servs.* v. *Alaska State Hosp. & Nursing Home Ass'n*, No. 3AN-90-859 Civil (Sup. Ct.), *aff'd*, 856 P.2d 755 (Alaska 1993).

[7] *Missouri Health Care Ass'n* v. *Stangler*, 765 F. Supp. 1413 (W.D. Mo. 1991).

including cases that were decided years after the New York system was in place.[8/]

- **Oklahoma's** reimbursement system for nursing homes was challenged on grounds that the State had not made adequate "findings" that the system complied with the Boren Amendment. No evidence was presented that the rates were inadequate in any respect, yet the State was forced to make new, more detailed "findings." *Oklahoma Nursing Home Ass'n* v. *Demps*, 816 F. Supp. 688 (W.D. Okla. 1992). The State hired an outside consulting firm which was an expert in the field, to assist in developing the court-ordered findings, but the court, with no evidentiary hearing, criticized various details in the report and ordered the State to make additional findings. Order, Sept. 28, 1993. This required further extensive work by the State and the consultant, yet there was never one shred of evidence presented that the rates were actually inadequate.

- In **Oregon**, the court held that the State had not satisfied the Boren Amendment's findings requirement. The court refused to consider whether the State's rates were adequate. Instead, it invalidated the State's Medicaid rates and ordered the State to reimburse providers "in accordance with the prior, validly promulgated and approved plan for the entire time during which the invalid plan was in effect and until a new plan is promulgated." *Volk* v. *Oregon Dep't of Human Resources*, 799 P.2d 658, 664 (Or. App. 1990). Under this approach, a State's failure to comply with a court's latest conception of the findings requirement may result in an order requiring millions of dollars in retroactive payments,

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[8/] *Pinnacle Nursing Home* v. *Axelrod*, 719 F. Supp. 1173 (W.D.N.Y. 1989), *aff'd*, 928 F.2d 1306 (2d Cir. 1991); *In re Avon Nursing Home* v. *Axelrod*, 195 A.D.2d 1046, 601 N.Y.S.2d 725.

even if the State's rates are more than adequate to cover the costs of efficient providers.

- **Washington** adopted a new payment system in 1987 and immediately found itself a defendant in a Boren Amendment suit brought by hospitals, even though a number of hospitals in the State had entered into private contracts with HMOs under which they agreed to accept rates equal to or less than the Medicaid rates that were challenged as "inadequate." The court nevertheless invalidated Washington's system for failure to identify efficiently and economically operated providers. *Multicare Medical Ctr.* v. *Washington*, 768 F. Supp. 1349, 1382-83 (W.D. Wash. 1991).

Even those States that have prevailed in Boren Amendment litigation have generally done so only after lengthy and expensive litigation. See, *e.g.*, *Folden* v. *Washington State Dep't of Social & Health Servs.*, 981 F.2d 1054 (9th Cir. 1992). A typical Boren Amendment case is complex, involves extensive discovery, often results in the State hiring expensive outside consultants, and interferes with the State's efforts to modify and improve its payment system.[2/]

The high costs of Boren Amendment litigation are not justified by any gain to recipients of Medicaid benefits. The Fifth Circuit's decision in this case is one of many that considers only the State's compliance with the asserted

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2/ The complexity of Boren Amendment litigation can be sensed from the length of the opinions in two cases where States prevailed. In *Folden v. Washington State Department of Social & Health Services*, 744 F. Supp. 1057 (W.D. Wash. 1990), the district court's decision spans 27 pages in the Federal Supplement. The opinion in *Gibbs* is 48 pages. See 838 F. Supp. 881.

"procedural" requirements of the Boren Amendment, without any inquiry into the adequacy of the State's reimbursement rates. It is impossible to see what legitimate purpose is served by protracted litigation over the adequacy of a State's "finding" that its reimbursement rates are reasonable, when (as in this case) there is no attempt by the plaintiff providers to prove that the rates are inadequate to cover the costs that must be incurred by an efficient provider. Litigation over these "procedural" issues is expensive and disruptive for the States, and does not further the underlying purpose of the Medicaid program of providing care to the indigent.

For these reasons, as well as the reasons stated in the petition for a writ of certiorari, see Pet. 17-21, the *amici* States join Louisiana in asking this Court to reconsider whether the Boren Amendment can be enforced by health care providers through an action under 42 U.S.C. § 1983.

II. THE COURT OF APPEALS' DECISION ADDS TO THE CONFUSION OVER THE REQUIREMENTS OF THE BOREN AMENDMENT AND THE APPROPRIATE STANDARD OF JUDICIAL REVIEW

If *Wilder* is not overruled, at the very least this Court should clarify that the standard of judicial review in Boren Amendment litigation — an issue expressly left open in *Wilder* — must be highly limited and deferential. The lower courts have frequently engaged in point-by-point review of the reasonableness of the details of a State's findings and reimbursement plan. It is unthinkable that this Court would permit this degree of intrusive review of the internal actions of federal agencies, and interests in comity and federalism demand that the Court put a stop to such review of State agencies, especially in an area where Congress intended them to have substantial flexibility.

The instant case typifies the lower courts' willingness to micro-manage State Medicaid reimbursement systems. The court of appeals considered whether the State had examined cost data from a "scientific" sample of hospitals, and whether the State should have conducted a separate study of labor costs rather than examining only total costs. Pet. App. 21a-22a. Other courts have focused on similar minutiae. See, *e.g.*, *Illinois Health Care Ass'n* v. *Bradley*, 983 F.2d 1460, 1466 (7th Cir. 1993) (reviewing the State's estimate of the number of minutes it takes to feed a nursing home patient). Such micro-management by federal courts of Medicaid reimbursement plans defeats a fundamental purpose of the Boren Amendment, which was to reduce federal oversight of state reimbursement plans.

In addition, as the court of appeals acknowledged, there is "bedlam" in the lower courts over the proper standard for reviewing compliance with the Boren Amendment. Pet. App. 9a n.8. See *Department of Health and Social Servs.* v. *Alaska State Hosp. & Nursing Home Ass'n*, 856 P.2d 755, 760 n.5 (Alaska 1993) ("courts have been less than consistent in applying standards of review to Medicaid payment schemes"). The Tenth Circuit reviews *de novo* "whether the plan is procedurally and substantively in compliance with the requirements of the [Boren Amendment]." *Amisub*, 879 F.2d at 795. In contrast, the Seventh Circuit applies an arbitrary and capricious standard of review to evaluate compliance with federal law. *Bradley*, 983 F.2d at 1462-63. The Fifth Circuit departed from both the Seventh and the Tenth Circuits in this case by announcing that it would conduct "*de novo* review of the state's factfinding process and arbitrary and capricious review of the findings and rates." Pet. App. 11a. The Third Circuit takes yet another approach, applying the arbitrary and capricious standard to determine whether rates are "reasonable and adequate," but engaging in "plenary review" of the "reasonable access" and "disproportionate share"

requirements. *West Virginia Univ. Hosps., Inc.* v. *Casey*, 885 F.2d 11, 24 (3d Cir. 1989), *aff'd on other grounds*, 499 U.S. 83 (1991).[10/]

The courts' confusion over the appropriate standard of review is closely linked to uncertainty about the *content* of the procedural and substantive requirements of the Boren Amendment. In this case, the court of appeals disregarded this Court's statement that the Boren Amendment imposes only "bare" procedural requirements, *Wilder*, 496 U.S. at 513, and instead defined the procedural "findings" requirement so broadly that it effectively (and erroneously) engaged in APA-type review of the State's rates under a *de novo* standard of review. The court examined the quality of the State's fact-gathering process and the amount of evidence that the State had gathered to support its findings. The court even went so far as to question Louisiana's basic rate-setting methodology — a methodology that had been approved by HCFA and was implemented seven years prior to the filing of this lawsuit.

In sum, if *Wilder* is not overruled, it is urgently important that this Court clarify the standard of judicial review to be

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[10/] There is "bedlam" on other issues as well. *Compare* Pet. 21a ("findings" requirement might not be satisfied by "ongoing process" of fact-gathering and analysis that is not reduced to writing) *with Folden* v. *Washington State Dep't of Social & Health Servs.*, 981 F.2d 1054, 1057 (9th Cir. 1992) ("states are free to create their own methods of arriving at the required findings and . . . the finding process does not require any special studies or written findings"); and *compare Amisub*, 879 F.2d at 796 ("findings" requirement includes requirement that States "identify and determine . . . efficiently and economically operated hospitals") *with Bradley*, 983 F.2d at 1464 (rejecting notion "that a state must identify a reasonable sample of particular existing nursing homes as paradigms of efficiency") and *Alaska State Hosp. Ass'n*, 856 P.2d at 761 ("*AMISUB* test unnecessarily restricts states' flexibility by requiring a specific approach to determining the reasonableness of rates.")

applied in Boren Amendment cases, and to establish unequivocally that the appropriate standard is limited and highly deferential. The Court should also grant the petition for a writ of certiorari in order to provide guidance to the lower courts concerning the content of the procedural "finding" requirement of the Boren Amendment.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX

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ALABAMA

1. *Alabama Hosp. Ass'n* v. *Beasley*, 702 F.2d 955 (11th Cir. 1983).

ALASKA

*2. *State, Dep't of Health & Social Servs., Medicaid Rate Comm'n* v. *Hope Cottages*, 863 P.2d 246 (Alaska 1993).

*3. *Department of Health & Social Servs.* v. *Alaska State Hosp. & Nursing Home Ass'n*, 856 P.2d 755 (Alaska 1993).

*4. *Health Ass'n of Alaska*, v. *Dep't of Health & Social Servs.*, No. 3AN-90-859 (Alaska Aug. 12, 1991).

CALIFORNIA

*5. *California Ass'n of Health Facilities* v. *California*, No. 5-90-1-1089 (E.D. Cal. Oct. 1, 1990).

6. *California Hosp. Ass'n* v. *Schweiker*, 559 F. Supp. 110 (C.D. Cal. 1982).

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* Asterisk indicates that the opinion was rendered subsequent to this Court's decision in *Wilder* v. *Virginia Hosp. Ass'n*, 496 U.S. 498 (1990).

COLORADO

7. *Amisub (PSL), Inc.* v. *Colorado Dep't of Social Servs.*, 698 F. Supp. 217 (D. Colo. 1988), *rev'd and remanded*, 879 F.2d 789 (10th Cir. 1989).

8. *Colorado Health Care Ass'n* v. *Colorado Dep't of Social Servs.*, 842 F.2d 1158 (10th Cir. 1988).

CONNECTICUT

*9. *Bethphage Lutheran Servs., Inc.* v. *Weicker*, 777 F. Supp. 1093 (D. Conn. 1991), *aff'd*, 965 F.2d 1239 (2d Cir. 1992).

*10. *Connecticut Hosp. Ass'n* v. *O'Neill*, 793 F. Supp. 47 (D. Conn. 1992).

DISTRICT OF COLUMBIA

*11. *Capitol Hill Hosp.* v. *District of Columbia*, 769 F. Supp. 16 (D.D.C. 1991).

IDAHO

*12. *Idaho County Nursing Home* v. *Idaho Dep't of Health & Welfare*, 120 Idaho 933, 821 P.2d 988 (Idaho 1991).

13. *Gem State Homes, Inc.* v. *Idaho Dep't of Health & Welfare*, 113 Idaho 23, 740 P.2d 65 (Idaho App. 1987).

ILLINOIS

*14. *Illinois Council on Long Term Care* v. *Bradley*, 759 F. Supp. 1309, *aff'd*, 957 F.2d 305 (7th Cir. 1992), *cert. denied*, 113 S. Ct. 55 (1992).

*15. *Illinois Health Care Ass'n* v. *Bradley*, 776 F. Supp. 411 (N.D. Ill. 1991), *aff'd*, 983 F.2d 1460 (7th Cir. 1993).

*16. *Illinois Hosp. Ass'n* v. *Edgar*, 765 F. Supp. 1343 (N.D. Ill. 1991).

17. *Illinois Health Care Ass'n* v. *Suter*, 719 F. Supp. 1419 (N.D. Ill. 1989).

18. *Illinois Council on Long Term Care* v. *Miller*, 579 F. Supp. 1140 (N.D. Ill. 1983).

19. *Illinois Hosp. Ass'n* v. *Illinois Dep't of Pub. Aid*, 576 F. Supp. 360 (N.D. Ill. 1983).

20. *Children's Memorial Hosp.* v. *Illinois Dep't of Pub. Aid*, 562 F. Supp. 165 (N.D. Ill. 1983).

21. *Senn Park Nursing Ctr.* v. *Miller*, 118 Ill. App. 3d 504, 455 N.E. 2d 153, *and*, 118 Ill. App. 3d 733, 455 N.E.2d 162 (Ill. App. 1 Dist. 1983).

INDIANA

*22. *Lett* v. *Magnant*, 965 F.2d 251 (7th Cir. 1992).

*23. *Indiana State Board of Pub. Welfare* v. *Tioga Pines Living Ctr.*, 622 N.E.2d 935 (Ind. 1993), *petition for cert. filed*, Jan. 26, 1994.

*24. *Indiana State Board of Pub. Welfare* v. *Tioga Pines Living Ctr.*, 575 N.E.2d 303 (Ind. App. 1991).

25. *Indiana Dep't of Pub. Welfare* v. *Crescent Manor, Inc.*, 416 N.E.2d 470 (Ind. App. 1981).

KANSAS

*26. *Kansas Hosp. Ass'n* v. *Whiteman*, 835 F. Supp. 1556 (D. Kan. 1993).

*27. *Kansas Health Care Ass'n*, v. *Kansas Dep't. of Social & Rehabilitation Servs.*, 822 F. Supp. 687 (D. Kan. 1993).

*28. *Kansas Health Care Ass'n, Inc.* v. *Kansas Dep't. of Social and Rehabilitation Servs.*, 754 F. Supp. 1502 (D. Kan. 1990), *rev'd*, 958 F.2d 1018 (10th Cir. 1992).

LOUISIANA

*29. *Abbeville General Hosp.* v. *Ramsey*, No. 91-356-B (M.D. La. Sept. 22, 1993), *rev'd*, 3 F.3d 797 (5th Cir. 1993), *petition for cert. filed*, Feb. 24, 1994.

30. *St. Tammany Parish Hospital Serv. Dist.* v. *Dep't Health & Human Resources*, 677 F. Supp. 455 (E.D. La. 1988).

MASSACHUSETTS

*31. *Massachusetts Federation of Nursing Homes, Inc.* v. *Massachusetts*, 772 F. Supp. 31 (D. Mass. 1991), *and*, 791 F. Supp. 899 (D. Mass. 1992).

*32. *Quincy City Hosp.* v. *Rate Setting Comm'n*, 406 Mass. 431, 548 N.E.2d 869 (Mass. 1990).

33. *New England Memorial Hosp.* v. *Rate Setting Comm'n*, 394 Mass. 296, 475 N.E.2d 740 (Mass. 1985).

MICHIGAN

*34. *Health Care Ass'n* v. *Department of Social Servs.*, 899 F.2d 14 (6th Cir. 1990).

*35. *LaPeer County Medical Care Facility* v. *Michigan*, 765 F. Supp. 1291 (W.D. Mich. 1991).

36. *Michigan Hosp. Ass'n* v. *Babcock*, 736 F. Supp. 759 (W.D. Mich. Feb. 11, 1990).

37. *Health Care Ass'n* v. *Babcock*, No. K89-50063 CA (W.D. Mich. May 17, 1990).

38. *Michigan Hosp. Ass'n* v. *Department of Social Servs.*, 738 F. Supp. 1080 (W.D. Mich. 1990).

39. *Michigan Hosp. Ass'n* v. *Department of Social Servs.*, 555 F. Supp. 675 (E.D. Mich. 1983).

40. *Coalition of Michigan Nursing Homes, Inc.* v. *Dempsey*, 537 F. Supp. 451 (E.D. Mich. 1982).

MISSISSIPPI

41. *Mississippi Hospital Ass'n* v. *Heckler*, 701 F.2d 511 (5th Cir. 1983).

MISSOURI

*42. *Missouri Health Care Ass'n* v. *Stangler*, 765 F. Supp. 1413 (W.D. Mo. 1991).

43. *AGI-Bluff Manor, Inc.* v. *Reagen*, 713 F. Supp. 1535 (W.D. Mo. 1989).

44. *SSM Healthcare Ctr.* v. *Reagen*, 681 F. Supp. 625 (W.D. Mo. 1988).

45. *AGI-Bloomfield Convalescent Ctr.* v. *Toan*, 679 S.W. 2d 294 (Mo. 1984).

NEBRASKA

*46. *Nebraska Hosp. Ass'n* v. *Department of Social Servs.*, No. CV91-3005 (D. Neb. June 1, 1992).

47. *Nebraska Health Care Ass'n, Inc.* v. *Dunning*, 575 F. Supp. 176, *and*, 578 F. Supp. (D. Neb. 1983), *aff'd*, 543 778 F.2d 1291 (8th Cir. 1985), *cert. denied*, 479 U.S. 1063 (1987).

NEVADA

*48. *Hillhaven, Inc.* v. *Nevada, Dep't of Human Resources*, No. CV88-6222 (Nev. Dec. 15, 1992).

NEW HAMPSHIRE

49. *Hoodkroft Convalescent Ctr.* v. *New Hampshire Dep't of Human Servs.*, 701 F. Supp. 17 (D. N.H. 1988), *aff'd*, 879 F.2d 968 (1st Cir. 1989).

NEW JERSEY

*50. *New Jersey Ass'n of Health Care Facilities, Inc.* v. *Gibbs*, 838 F. Supp. 881 (D.N.J. 1993).

NEW YORK

51. *Oberlander* v. *Perales*, 740 F.2d 116 (2d Cir. 1984).

*52. *United Cerebral Palsy Ass'ns.* v. *Cuomo*, 783 F. Supp. 43 (N.D.N.Y. 1991), *aff'd*, 966 F.2d 743 (2d Cir.), *cert. denied*, 113 S. Ct. 599 (1992).

*53. *Rye Psychiatric Hospital Center, Inc.* v. *Surles*, 777 F. Supp. 1142 (S.D.N.Y. 1991).

*54. *Pinnacle Nursing Home* v. *Axelrod*, 719 F. Supp. 1173 (W.D.N.Y. 1989), *aff'd in part & rev'd in part*, 928 F.2d 1306 (2d Cir. 1991).

55. *Friedman* v. *Perales*, 668 F. Supp. 216 (S.D.N.Y. 1987), *aff'd*, 841 F.2d 47 (2d Cir. 1988).

56. *New York City Health & Hosp. Corp.* v. *Heckler*, 593 F. Supp. 226 (S.D.N.Y. 1984).

*57. *Lakeshore Nursing Home* v. *Axelrod*, 181 A.D.2d 333, 586 N.Y.S.2d 433 (A.D. 3d Dep't 1992).

*58. *Rye Psychiatric Hospital Ctr.* v. *State of New York*, 576 N.Y.S.2d 449 (1991), *appeal denied*, 587 N.Y.S.2d 287, (A.D.3d Dep't 1992).

OHIO

*59. *Ohio Hosp. Ass'n* v. *Ohio Dep't of Human Servs.*, 62 Ohio St. 3d 97, 579 N.E.2d 695 (Ohio 1991).

60. *Ohio Academy of Nursing Homes, Inc.* v. *Barry*, 56 Ohio St. 3d 120, 564 N.E.2d 686 (Ohio 1990).

OKLAHOMA

*61. *Oklahoma Nursing Home Ass'n* v. *Demps*, 792 F. Supp. 721 (W.D. Okla. 1992).

62. *Oklahoma Hosp. Ass'n* v. *Oklahoma Dep't of Human Servs.*, No. Civ 83-1274-BT (W.D. Okla. Aug. 24, 1983).

OREGON

*63. *Oregon Ass'n of Homes for the Aging, Inc.* v. *Oregon*, 5 F.3d 1239 (9th Cir. 1993).

64. *Francisco* v. *Department of Human Resources*, No. CV 89-6244-HO (D. Or. July 10, 1990).

*65. *Oregon Ass'n of Hosps.* v. *Dep't of Human Resources*, No. CV 88-225-DA (D. Or. Sept. 25, 1990).

66. *Volk* v. *State*, 104 Or. App. 27, 799 P.2d 658 (Or. App. 1990).

PENNSYLVANIA

*67. *Erie County Geriatric Ctr.* v. *Sullivan*, 952 F.2d 71 (3d Cir. 1991).

68. *Wilmac Corp.* v. *Bowen*, 811 F.2d 809 (3d Cir. 1987).

*69. *Temple Univ.* v. *White*, 729 F. Supp. 1093, *and*, 732 F. Supp. 1327, 732 F. Supp. 1329 (E.D. Pa. 1990), *aff'd*, 941 F.2d 201 (3d Cir. 1991), *cert. denied*, 112 S. Ct. 873 (1992).

70. *Wilmac Corp.* v. *Heckler*, 633 F. Supp. 1000 (E.D. Pa. 1986).

71. *West Virginia Univ. Hosps., Inc.* v. *Casey*, 701 F. Supp. 496 (M.D. Pa. 1988), *aff'd in part & rev'd in part*, 885 F.2d 11 (3d Cir. 1989).

72. *Troutman* v. *Cohen*, 588 F. Supp. 590 (E.D. Pa.), *aff'd*, 755 F.2d 920, *and*, 755 F.2d 924 (3d Cir. 1984).

73. *Children's Hosp. of Philadelphia* v. *Secretary of Dep't of Pub. Welfare*, 568 F. Supp. 1001 (E.D. Pa. 1983).

74. *Citizens General Hosp.* v. *Commonwealth, Dep't of Pub. Welfare*, 125 Pa. Commw. 358, 558 A.2d 125 (Pa. Cmwlth 1989).

75. *Presbyterian-University of Pennsylvania Med. Ctr.* v. *Pennsylvania, Dep't of Pub. Welfare*, 553 A.2d 1027 (Pa. Cmwlth 1989).

76. *Citizens General Hosp.* v. *Pennsylvania Dep't of Pub. Welfare*, 558 A.2d 125 (Pa. Cmwlth 1989).

77. *Grandview Health Homes, Inc.* v. *Pennsylvania Dep't of Pub. Welfare*, 552 A.2d 720 (Pa. Cmwlth 1988).

78. *In re St. Joseph's Hosp.*, 103 Bankr. 643 (Bankr. E.D. Pa. 1989).

TEXAS

79. *Texas Hospital Ass'n* v. *National Heritage Ins. Co.*, 802 F. Supp. 1507 (W.D. Tex. 1992).

80. *Thomas* v. *Johnston*, 557 F. Supp. 879 (W.D. Tex. 1983).

SOUTH CAROLINA

81. *Charleston Memorial Hosp.* v. *Conrad*, 693 F.2d 324 (4th Cir. 1982).

82. *ANCO, Inc.* v. *State Health & Human Servs. Finance Comm'n*, 300 S.C. 432, 388 S.E.2d 780 (S.C. 1989).

UTAH

83. *Weber Memorial Care Ctr.* v. *Utah Dep't of Health*, 751 P.2d 831 (Utah 1988).

VERMONT

84. *Berlin Convalescent Center* v. *Stoneman*, 159 Vt. 53, 615 A.2d 141 (Vt. 1992).

VIRGINIA

85. *Virginia Hosp. Ass'n* v. *Baliles*, 868 F.2d 653 (4th Cir. 1989), *aff'd sub. nom.*, *Wilder* v. *Virginia Hosp. Ass'n*, 496 U.S. 498 (1990).

86. *Virginia Hosp. Ass'n* v. *Baliles*, 830 F.2d 653 (4th Cir. 1987).

87. *Vantage Healthcare* v. *Virginia Bd. of Medical Assistance Servs.*, 684 F. Supp. 1329 (E.D. Va.1988).

88. *Mary Washington Hosp., Inc.* v. *Fisher*, 635 F. Supp. 891 (E.D. Va. 1985).

WASHINGTON

*89. *Multicare Medical Ctr.* v. *Washington*, 768 F. Supp. 1349 (W.D. Wash. 1991).

*90. *Folden* v. *Washington State Dep't of Social & Health Servs.*, 744 F. Supp. 1507 (W.D. Wash. April 5, 1990) *aff'd* 981 F.2d 1054 (9th Cir. 1992).

91. *Washington State Hosp. Ass'n* v. *Washington*, No. C86-463D (W.D. Wash. May 19, 1987).

WEST VIRGINIA

92. *United Hosp. Ctr.* v. *Richardson*, 757 F.2d 1445 (4th Cir. 1985).

WISCONSIN

93. *Wisconsin Hosp. Ass'r* v. *Reivitz*, 733 F.2d 1226 (7th Cir. 1984).

94. *Hillhaven Corp.* v. *Wisconsin Dep't of Health & Social Services*, 733 F.2d 1224 (7th Cir. 1984).

95. *St. Michael Hosp. of Franciscan Sisters, Inc.* v. *Thompson*, 725 F. Supp. 1038 (W.D. Wis. 1989).

96. *Wisconsin Hosp. Ass'n* v. *Reivitz*, 630 F. Supp. 1015 (E.D. Wis. 1986), *aff'd in part & vacated in part*, 820 F.2d 863 (7th Cir. 1987).